

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.20684 of 2013

Arising Out of P.S.Case No. -1695C Year- 2011 Thana -SAHARSA COMPLAINT CASE District-
SAHARSA

- =====
1. Gopal Kumar Sinha Son Of Late Yugal Kishore Prasad Sinha Of Village Batraha, Ward No. 23 P.S. And District Saharsa
 2. Smt. Punam Sinha Wife Of Shri Vipul Kumar Sinha Of Village Batraha, Ward No. 23 P.S. and District Saharsa

.... Petitioners

Versus

1. The State Of Bihar
2. Vipul Kumar Sinha, Village Batraha, Ward No. 23 P.S. and District Saharsa

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Amit Kumar Mukund, Advocate
Mr. Anirudh Prasad Singh, Advocate
Mr. Rekha Mukund, Advocate

For the Opposite Parties : Mr. None.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

6 21-06-2017 Petitioners seek quashing of order dated 05.04.2013 passed by Judicial Magistrate, Ist Class, Saharsa in Complaint Case No.1695C of 2011 whereunder cognizance has been taken against the petitioners for the offence under Sections 323 and 379/34 of the IPC and additionally under Section 497 of the IPC against petitioner no.1

2. The facts in brief is that the Opposite Party No.2 who is full brother of petitioner no.1 and husband of petitioner no.2 filed a complaint case on the file of CJM, Saharsa alleging inter-alia that he was married with petitioner no.2 for about 25



years ago and from the said wed lock he was blessed with three daughters and one son. Out of them he has performed marriage of his two daughters and they are residing at their matrimonial house. His third daughter and son are college going students. He is presently posted as Assistant in State Bank of India and out of his salary, he constructed a house at village-Batraha and performed marriage of his daughter from the income of salary and also by taking loan. The complainant was subsequently transferred to Sonbarsa Branch and in his absence, his younger brother (petitioner no.1) started residing at the house of complainant. His brother established physical relation with his wife and on 26.11.2011 both were found in suspicious condition on a bed. The complainant on the following morning asked his brother to leave the house whereupon his brother forcibly took ornaments and cash amount by breaking the almirah and on protest his brother threatened of dire consequences by pointing a fire arm. The local police in connivance with his brother did not entertain his case and so he filed present case against the wife and brother who are petitioners before this Court.

3. In course of inquiry, the complainant on solemn affirmation and two more witnesses supported the allegation made in the complaint petition. The learned Magistrate finding prima-



facie case for the offence in question took cognizance. The said order has been sought to be quashed.

4. The learned counsel for the petitioners submits that in spite of repeated notices given to the Opposite Party No.2, he did not appear to oppose this criminal miscellaneous. After filing of this criminal miscellaneous the petitioner no.2 started residing with her husband (Opposite Party No.2) and so the complainant does not want to proceed with the case before the court below. He further submits that the complainant has filed the present case after the institution of two criminal cases by petitioner no.2. The petitioner no.2 filed criminal case (vide 1412C of 2011) against her husband (Opposite Party No.2) for the offence under Sections 341, 323, 498A, 506/34 of the IPC. The Opposite Party no.2 filed a criminal revision before Sessions Judge against the criminal case which was dismissed on 22.02.2013 by Additional Sessions Judge-III, Saharsa. Besides that, the petitioner no.2 Smt. Punam Sinha filed a Maintenance Case No.192 of 2011 before the Principal Judge, Family Court, Saharsa where a monthly maintenance to the tune of Rs.7,000/- has been allowed in favour of petitioner no.2 as per order dated 03.04.2012. She further filed a petition before Womens Commission against the atrocities of her husband in which summons were issued by the Commission on



04.10.2012. The complainant Opposite Party no.2 had one more wife, namely, Mrs. Kiran Devi who filed a criminal case against the present complainant. The said case ended in acquittal vide Trial no.681 of 2013. He further submits that there are several contradictions in the statement of witnesses and from the materials on record, no case constituting any offence is made out against the petitioners. The present case was lodged only to counter the cases lodged by the petitioner no.2.

5. The learned APP on the other hand opposed the submissions.

6. On perusal of the Lower Court Record as well as materials available on record, I find that the petitioners are full brother and wife of the Opposite Party No.2. The present complaint case was filed on 28.11.2011 and prior to filing of this case, the petitioner no.2 had filed maintenance case before Principal Judge, Family Court, Saharsa. Besides that, three more cases were filed by petitioner no.2 against Opposite Party No.2. The Principal Judge awarded maintenance to the tune of Rs.7,000/- per month in favour of petitioner no.2. The learned counsel for the petitioners holding power on behalf of the both the petitioners has submitted that the petitioner no.2 is residing with her husband in consequence of compromise between wife and



husband and the Opposite Party No.2 is not interested in prosecuting the petitioners. It further appears that there are contradictions also in the statement of complainant and his witnesses examined at the time of enquiry.

7. In the above view of the matter, this Court is of the view that continuance of the criminal proceeding against the petitioners would amount to abuse of process of the Court. Accordingly, the impugned order of cognizance dated 05.04.2013 passed in Complaint Case No.1695C of 2011 is hereby quashed. The application stands allowed.

8. Let the Lower Court Records be returned forthwith.

(Sanjay Kumar, J)

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